

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division**

**RODNEY EUGENE SEARS (#1139321),**

**Petitioner,**

**v.**

**Civil Action No. 2:21cv167**

**HAROLD CLARKE, Director,  
Department of Corrections,**

**Respondent.**

**FINAL ORDER**

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254 filed by Rodney Eugene Sears (“Sears” or “Petitioner”) (ECF No. 1). The petition alleges violation of Petitioner’s constitutional rights pertaining to his 2018 convictions in the Hampton Circuit Court for possession with intent to distribute a Schedule I or II drug, possession of a firearm while in possession of a Schedule I or II drug, and possession of a firearm by a convicted felon. As a result of the convictions, Petitioner was sentenced to serve a prison term of seven years and nine months.

The petition was referred to a United States Magistrate Judge for report and recommendation pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Local Civil Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia. The Magistrate Judge’s Report and Recommendation filed June 28, 2021, recommended Sears’ petition be dismissed with prejudice for being time-barred, as Sears has not provided sufficient evidence to warrant equitable tolling or any other basis to permit federal review of his untimely claims. (ECF No. 19.) The Report and Recommendation advised Sears of his right to object and the time limit for doing so. On July 13, 2021, the Court received a telephone call from the facility where Sears was being housed advising that Sears was on “special watch” and could not receive outside correspondence. This

information was also confirmed by correspondence from the facility on July 16, 2021. (ECF No. 20.)

On July 22, 2021 the Court received confirmation from Petitioner's family members that he had been removed from "special watch" and was able to receive outside mail again. By Order entered July 27, 2021, the Court directed the Report and Recommendation be resent to Petitioner and extended the time for filing objections to fourteen days from the date of mailing of the Order on July 27, 2021. (ECF No. 21.) The second mailing was not returned as undeliverable. The Court has received no objections to the Report and Recommendation, and the time for filing objections has now expired.<sup>1</sup>

Accordingly, the Court does hereby ACCEPT and ADOPT the findings and recommendations set forth in the Report and Recommendation filed June 28, 2021, and it is therefore ORDERED that Respondent's Motion to Dismiss (ECF No. 13) is GRANTED, and that the petition (ECF No. 1) is DENIED and DISMISSED with prejudice as being time-barred.

Finding that the basis for dismissal of Petitioner's § 2254 petition is not debatable, and alternatively finding that Petitioner has not made a "substantial showing of the denial of a constitutional right," a certificate of appealability is **DENIED**. 28 U.S.C. § 2253(c); *see* Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a); *Miller-El v. Cockrell*, 537 U.S. 322, 335–38 (2003); *Slack v. McDaniel*, 529 U.S. 473, 483–85 (2000).

Petitioner is **ADVISED** that because a certificate of appealability is denied by this Court, he may seek a certificate from the United States Court of Appeals for the Fourth Circuit. Fed. Rule App. Proc. 22(b); Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a). **If Petitioner intends to seek a certificate of appealability from the Fourth Circuit, he must do so within thirty (30) days from the date of this Order. Petitioner may seek such a certificate by filing a written notice of**

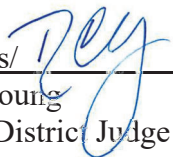
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<sup>1</sup> On August 26, 2021, more than two weeks after the time for filing objections expired, the Court received a letter from the Defendant. (ECF No. 22.) The letter did not mention the Report and Recommendation, and it did not contain any objections to the Report and Recommendation.

**appeal with the Clerk of the United States District Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510.**

The Clerk is directed to mail a copy of this Final Order to Petitioner and provide an electronic copy of the Final Order to counsel of record for Respondent.

Richmond, Virginia  
Date: August 31, 2021

  
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/s/ Roderick C. Young  
United States District Judge